

R E M A R K S

Claims 6-12 and 14-17 are pending in the present application. Claims 6-17 are rejected under 35 U.S.C. §112, first paragraph as not being supported by an adequate written description. Unless otherwise noted, the claims have been cancelled or amended to further Applicant's business interests and the prosecution of the present application in a manner consistent with the PTO's Patent Business Goals (PBG; 65 Fed. Reg. 54603 (September 8, 2000)), and not in acquiescence to the Examiner's arguments and while reserving the right to prosecute the original (or similar) claims in the future. None of the claim amendments made herein are intended to narrow the scope of any of the amended claims within the meaning of *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000) or related cases.

Applicants respectfully submit that the claims are supported by an adequate written description. To comply with the written description requirement, the specification must indicate that the inventor had possession of the invention claimed:

[The] function of [the] description requirement is to ensure that the inventor had possession, as of the filing date of the application relied on, of the specific subject matter later claimed by him; to comply with the description requirement, it is not necessary that the application describe the claimed invention in *ipsis verbis*; all that is required is that it reasonably convey to persons skilled in the art that, as of the filing date thereof, the inventor had possession of the subject later claimed by him.

In re Edwards, 568 F.2d 1349, 196 USPQ 465 (CCPA 1978).

With respect to claims 6-11, which are directed to a method of increasing white blood cells counts by administration of compositions enriched for the t10,c12 isomer of CLA, applicants first note that according to *Edwards*, it is not necessary to describe the invention "in *ipsis verbis*." In other words, the specification need only show that the inventors contemplated using the specified CLA compositions to increase white blood cell counts. It is irrelevant if the actual words "white blood cell count" were used. Next, applicants note that the question of whether the inventors had possession of the invention is analyzed under the "person of ordinary skill in the art" standard. It is undisputed that one of skill in the art would recognize that CD-4 and CD-8 cells are white blood cells. The applicants clearly state at page 13, lines 11-12 that the t10,c12 enriched CLA compositions can be used increase CD-4 and CD-8 cell counts. Thus, the

specification demonstrates that the inventors did have possession of the claimed invention, the use of the claimed c10,t12 enriched CLA compositions to increase white blood cell counts. Nothing more is required by the law.

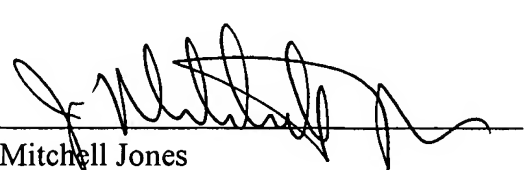
These arguments are also directly applicable to Claims 12 and 14-17. The applicants specifically state at page 13, lines 9-11, that the t10,c12 CLA compositions of the invention can be used to attenuate allergic reactions and prevent weight loss due to immune stimulation. Thus, the applicants clearly had possession of the claimed invention of treating immune related hypersensitivity. Nothing more is required by the law.

The Examiner also makes a reference on page 2, para. 2 to the claims not being enabled, even though this rejection is not formally stated. Applicants submit that the claims are enabled. The analysis for enablement asks whether the specification teaches how to make and use the claimed invention. The claims in the case are very simple, they merely require administration of CLA enriched for the t10,c12 isomer to achieve the desired effect (which is described in the specification and references incorporated by reference into the specification). Thus, applicants have clearly demonstrated how to make and use the invention.

Conclusion

All grounds of rejection and objection of the Office Action of May 18, 2004 having been addressed, reconsideration of the application is respectfully requested. It is respectfully submitted that the invention as claimed fully meets all requirements and that the claims are worthy of allowance. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicant encourages the Examiner to call the undersigned collect at (608) 218-6900.

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